



"Quality In Action"

November 15, 1994

RECEIVED

NOV 17 94

RQ-775

The Honorable Dan Morales
Attorney General of the State of Texas
P.O. Box 12548
Capitol Station
Austin, TX 78711-2548

Opinion Committee

GOV

ML-30437-94
30437

ATTN: Opinion Committee

Dear Attorney General Morales:

The Arlington Independent School District (AISD) has received the request for records which is attached as exhibit A. The AISD believes that the records requested fall within exceptions to the Texas Open Records Law, Texas Government Code §552.001 et seq., and may be withheld from the requestor, Mary Doclar, reporter with the Fort Worth Star Telegram.

The records requested (attached as exhibit B) are:

1. Records reflecting the disciplinary action taken against the 13 year old Workman Junior High student who brought a machete and several other dangerous weapons to school October 22 and threatened students and his teacher.

The AISD believes that the documents should be excepted under the following sections of the Texas Government Code:

§552.101 Exception: Confidential Information

§552.114 Exception: Student Records

The AISD also believes that §552.126 Education Records applies to this request.

Government Code §552.101 excepts any information if considered confidential by law. A law which requires confidentiality of student records is 20 U.S.C.A. §1232g, also known as the Family Educational and Privacy Rights Act (FERPA). Section 552.114 excepts information in a student record at an educational institution funded wholly or in part by state revenue. Section 552.126 states in part that under the Open Records Law, the release of information in educational

records is not required except in conformity with FERPA.

The AISD is funded in part by state revenue and by federal funds. Such funding brings the AISD under the authority of §552.114 and FERPA.

The documents requested are records as defined in 20 U.S.C.A. 1232g (a)(4)(A) because they are documents which--

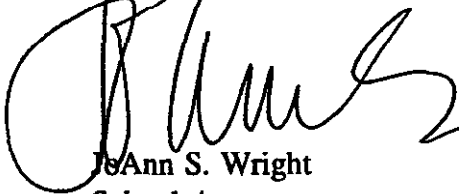
- (i) containing information directly related to a student, and
- (ii) are maintained by an educational agency or institution...

The records requested are identifiable as to the particular student. Even redacting the student's name would not protect the identity of the student, since the incident is so conspicuously specific.

The Open Records Law §552.301 requires that a governmental body seek a decision from the Attorney General when that body considers a request for records to fall within an exception enumerated in Subchapter C of the law, §552.101-§552.123. Section 552.023 which requires compliance with FERPA is not within subchapter C of the law. Additionally, FERPA does not have a similar requirement to request a determination on excepted information. The AISD believes that, under FERPA, §552.023 and the fact that §552.023 falls outside of the Subchapter C exceptions which require a determination, it can deny the request for student records without the necessity of seeking a determination by the Attorney General. However, this request for a determination is made out of an abundance of caution and the under the §552.302 presumption that the records are public if there is a failure to make a timely request for an Attorney General determination.

A response to this issue would assist the AISD in responding to future requests for student records and it would clarify the law to those making requests for student records. The AISD respectfully requests that the Attorney General find that the documents attached hereto are excepted from disclosure and that future requests for student records do not require a determination by the Attorney General.

Sincerely yours,



JeAnn S. Wright
School Attorney

JSW/lb

cc: Lynn Hale
Jerry McCullough
Steve Jacoby
Mary Doclar